

**SUBSTITUTE FOR
SENATE BILL NO. 1000**

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 11 and 14 of chapter II, sections 4a, 16a, and 31 of chapter IX, and sections 1 and 3 of chapter XI (MCL 762.11, 762.14, 769.4a, 769.16a, 769.31, 771.1, and 771.3), section 11 of chapter II as amended by 1993 PA 293, section 14 of chapter II as amended by 1994 PA 286, section 4a of chapter IX as amended by 2001 PA 208, section 16a of chapter IX as amended by 2001 PA 204, section 31 of chapter IX as amended by 2002 PA 31, section 1 of chapter XI as amended by 2002 PA 666, and section 3 of chapter XI as amended by 2003 PA 101, and by adding section 4b to chapter IX.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER II

2

Sec. 11. If an individual pleads guilty to a charge of a

1 criminal offense, other than a felony for which the maximum
2 punishment is life imprisonment, a major controlled substance
3 offense, or a traffic offense, committed on or after the
4 individual's seventeenth birthday but before his or her
5 twenty-first birthday, the court of record having jurisdiction of
6 the criminal offense may, without entering a judgment of
7 conviction and with the consent of that individual, consider and
8 assign that individual to the status of youthful trainee, **unless**
9 **the individual has already successfully completed participation**
10 **in a drug treatment court under chapter 10a of the revised**
11 **judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082.**

12 As used in this section, "traffic offense" means a violation of
13 the Michigan vehicle code, ~~Act No. 300 of the Public Acts of~~
14 ~~1949, being sections 257.1 to 257.923 of the Michigan Compiled~~
15 ~~Laws~~ **1949 PA 300, MCL 257.1 to 257.923**, or a violation of a
16 local ordinance substantially corresponding to that act, that
17 involves the operation of a vehicle and, at the time of the
18 violation, is a felony or a misdemeanor.

19 Sec. 14. (1) If consideration of an individual as a
20 youthful trainee is not terminated and the status of youthful
21 trainee is not revoked as provided in section 12 of this chapter,
22 upon final release of the individual from the status as youthful
23 trainee, the court shall discharge the individual and dismiss the
24 proceedings.

25 (2) An assignment of an individual to the status of youthful
26 trainee as provided in this chapter is not a conviction for a
27 crime and, except as provided in subsection (3), the individual

1 assigned to the status of youthful trainee shall not suffer a
2 civil disability or loss of right or privilege following his or
3 her release from that status because of his or her assignment as
4 a youthful trainee.

5 (3) An individual assigned to youthful trainee status for a
6 listed offense enumerated in section 2 of the sex offenders
7 registration act, **1994 PA 295, MCL 28.722**, is required to comply
8 with the requirements of that act.

9 (4) Unless the court enters a judgment of conviction against
10 the individual for the criminal offense under section 12 of this
11 chapter, all proceedings regarding the disposition of the
12 criminal charge and the individual's assignment as youthful
13 trainee shall be closed to public inspection, but shall be open
14 to the courts of this state, the department of corrections, the
15 ~~department of social services, and family independence agency,~~
16 law enforcement personnel, **and prosecuting attorneys** for use only
17 in the performance of their duties.

18 CHAPTER IX

19 Sec. 4a. (1) When an individual who has not been convicted
20 previously of a violation of section 81 or 81a of the Michigan
21 penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a violation
22 of a local ordinance substantially corresponding to section 81 of
23 that act, pleads guilty to, or is found guilty of, a violation of
24 section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL
25 750.81 and 750.81a, and the victim of the assault is the
26 offender's spouse or former spouse, an individual who has had a
27 child in common with the offender, an individual who has or has

1 had a dating relationship with the offender, or an individual
2 residing or having resided in the same household as the offender,
3 the court, without entering a judgment of guilt and with the
4 consent of the accused and of the prosecuting attorney in
5 consultation with the victim, may defer further proceedings and
6 place the accused on probation as provided in this section.
7 However, before deferring proceedings under this subsection, the
8 court shall contact the department of state police and determine
9 whether, according to the records of the department of state
10 police, the accused has previously been convicted under section
11 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and
12 750.81a, or under a local ordinance substantially corresponding
13 to section 81 of that act, or has previously availed himself or
14 herself of this section. If the search of the records reveals an
15 arrest for a violation of section 81 or 81a of the Michigan penal
16 code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance
17 substantially corresponding to section 81 of that act but no
18 disposition, the court shall contact the arresting agency and the
19 court that had jurisdiction over the violation to determine the
20 disposition of that arrest for purposes of this section. As used
21 in this subsection, "dating relationship" means frequent,
22 intimate associations primarily characterized by the expectation
23 of affectional involvement. This term does not include a casual
24 relationship or an ordinary fraternization between 2 individuals
25 in a business or social context.

26 (2) Upon a violation of a term or condition of probation, the
27 court may enter an adjudication of guilt and proceed as otherwise

1 provided in this chapter.

2 (3) An order of probation entered under subsection (1) may
3 require the accused to participate in a mandatory counseling
4 program. The court may order the accused to pay the reasonable
5 costs of the **mandatory counseling** program. **The court also may**
6 **order the accused to participate in a drug treatment court under**
7 **chapter 10A of the revised judicature act of 1961, 1961 PA 236,**
8 **MCL 600.1060 to 600.1082.**

9 (4) The court shall enter an adjudication of guilt and
10 proceed as otherwise provided in this chapter if any of the
11 following circumstances exist:

12 (a) The accused commits an assaultive crime during the period
13 of probation. As used in this subdivision, "assaultive crime"
14 means 1 or more of the following:

15 (i) That term as defined in section 9a of chapter X.

16 (ii) A violation of chapter XI of the Michigan penal code,
17 1931 PA 328, MCL 750.81 to 750.90g.

18 (b) The accused violates an order of the court that he or she
19 receive counseling regarding his or her violent behavior.

20 (c) The accused violates an order of the court that he or she
21 have no contact with a named individual.

22 (5) Upon fulfillment of the terms and conditions, the court
23 shall discharge the person and dismiss the proceedings against
24 the person. Discharge and dismissal under this section shall be
25 without adjudication of guilt and is not a conviction for
26 purposes of this section or for purposes of disqualifications or
27 disabilities imposed by law upon conviction of a crime.

1 (6) There may be only 1 discharge and dismissal under this
2 section with respect to any individual. The department of state
3 police shall retain a nonpublic record of an arrest and discharge
4 or dismissal under this section. This record shall be furnished
5 to a court or police agency upon request pursuant to
6 subsection (1) **or to an office of prosecuting attorney** for the
7 purpose of showing that a defendant in a criminal action under
8 section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL
9 750.81 and 750.81a, or a local ordinance substantially
10 corresponding to section 81 of that act has already once availed
11 himself or herself of this section.

12 **Sec. 4b. If an individual who is eligible for admission to**
13 **a drug treatment court under chapter 10A of the revised**
14 **judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082,**
15 **pleads guilty to or is found guilty of a crime, the court,**
16 **without entering a judgment of guilt, may defer sentencing and**
17 **place the individual on probation in a drug treatment court**
18 **program under chapter 10A of the revised judicature act of 1961,**
19 **1961 PA 236, MCL 600.1060 to 600.1082.**

20 Sec. 16a. (1) Except as otherwise provided in subsection
21 (3), upon final disposition of an original charge against a
22 person of a felony or a misdemeanor for which the maximum
23 possible penalty exceeds 92 days' imprisonment or a local
24 ordinance for which the maximum possible penalty is 93 days'
25 imprisonment and that substantially corresponds to a violation of
26 state law that is a misdemeanor for which the maximum possible
27 penalty is 93 days' imprisonment, or a misdemeanor in a case in

1 which the appropriate court was notified that fingerprints were
2 forwarded to the department of state police, or upon final
3 disposition of a charge of criminal contempt under section 2950
4 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL
5 600.2950 and 600.2950a, or final disposition of a charge of
6 criminal contempt for violating a foreign protection order that
7 satisfies the conditions for validity provided in section 2950i
8 of the revised judicature act of 1961, 1961 PA 236, MCL
9 600.2950i, the clerk of the court entering the disposition shall
10 immediately report to the department of state police the final
11 disposition of the charge on forms approved by the state court
12 administrator and in a manner consistent with section 3 of 1925
13 PA 289, MCL 28.243. The report to the department of state police
14 shall include the finding of the judge or jury, including a
15 finding of guilty, guilty but mentally ill, not guilty, or not
16 guilty by reason of insanity, or the person's plea of guilty,
17 nolo contendere, or guilty but mentally ill; if the person was
18 convicted, the offense of which the person was convicted; and a
19 summary of any sentence imposed. The summary of the sentence
20 shall include any probationary term; any minimum, maximum, or
21 alternative term of imprisonment; the total of all fines, costs,
22 and restitution ordered; and any modification of sentence. The
23 report shall include the sentence if imposed under any of the
24 following:

25 (a) Section 7411 of the public health code, 1978 PA 368,
26 MCL 333.7411.

27 (b) Sections 11 to 15 of chapter II.

1 (c) Section 4a of chapter IX.

2 (d) Chapter 10A of the revised judicature act of 1961, 1961
3 PA 236, MCL 600.1060 to 600.1082.

4 (2) Upon sentencing a person convicted of a misdemeanor or of
5 a violation of a local ordinance, other than a misdemeanor or
6 local ordinance described in subsection (1), the clerk of the
7 court imposing sentence immediately shall, if ordered by the
8 court, advise the department of state police of the conviction on
9 forms approved by the state court administrator.

10 (3) Except as otherwise provided in subsections (4) and (6),
11 the clerk of a court shall not report a conviction of a
12 misdemeanor offense under the Michigan vehicle code, 1949 PA 300,
13 MCL 257.1 to 257.923, or a local ordinance substantially
14 corresponding to a provision of that act unless 1 or more of the
15 following apply:

16 (a) The offense is punishable by imprisonment for more than
17 92 days.

18 (b) The offense is an offense that would be punishable by
19 more than 92 days as a second conviction.

20 (c) A judge of the court orders the clerk to report the
21 conviction.

22 (4) Unless ordered by the court, the clerk of a court is not
23 required to report a conviction of a misdemeanor offense for a
24 violation of section 904(3)(a) of the Michigan vehicle code, 1949
25 PA 300, MCL 257.904, or a local ordinance substantially
26 corresponding to section 904(3)(a) of the Michigan vehicle code,
27 1949 PA 300, MCL 257.904.

1 (5) As part of the sentence for a conviction of an offense
2 described in subsection (2), if fingerprints have not already
3 been taken, the court shall order that the fingerprints of the
4 person convicted be taken and forwarded to the department of
5 state police.

6 (6) As part of the sentence for a conviction of a listed
7 offense as defined in section 2 of the sex offenders registration
8 act, 1994 PA 295, MCL 28.722, the court shall order that the
9 fingerprints of the person convicted be taken and forwarded as
10 provided in the sex offenders registration act, 1994 PA 295,
11 MCL 28.721 to 28.732, if fingerprints have not already been taken
12 and forwarded as provided in that act.

13 (7) Within 21 days after the date a person licensed or
14 registered under article 15 of the public health code, 1978
15 PA 368, MCL 333.16101 to 333.18838, is convicted of a misdemeanor
16 involving the illegal delivery, possession, or use of alcohol or
17 a controlled substance or a felony, the clerk of the court
18 entering the conviction shall report the conviction to the
19 department of consumer and industry services on a form prescribed
20 and furnished by that department.

21 Sec. 31. As used in this section and section 34 of this
22 chapter:

23 (a) "Departure" means a sentence imposed that is not within
24 the appropriate minimum sentence range established under the
25 sentencing guidelines set forth in chapter XVII.

26 (b) "Intermediate sanction" means probation or any sanction,
27 other than imprisonment in a state prison or state reformatory,

1 that may lawfully be imposed. Intermediate sanction includes,
2 but is not limited to, 1 or more of the following:

3 (i) Inpatient or outpatient drug treatment **or participation**
4 **in a drug treatment court under chapter 10A of the revised**
5 **judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082.**

6 (ii) Probation with any probation conditions required or
7 authorized by law.

8 (iii) Residential probation.

9 (iv) Probation with jail.

10 (v) Probation with special alternative incarceration.

11 (vi) Mental health treatment.

12 (vii) Mental health or substance abuse counseling.

13 (viii) Jail.

14 (ix) Jail with work or school release.

15 (x) Jail, with or without authorization for day parole under
16 1962 PA 60, MCL 801.251 to 801.258.

17 (xi) Participation in a community corrections program.

18 (xii) Community service.

19 (xiii) Payment of a fine.

20 (xiv) House arrest.

21 (xv) Electronic monitoring.

22 (c) "Offender characteristics" means only the prior criminal
23 record of an offender.

24 (d) "Offense characteristics" means the elements of the crime
25 and the aggravating and mitigating factors relating to the
26 offense that the legislature determines are appropriate. For
27 purposes of this subdivision, an offense described in section 33b

1 of the corrections code of 1953, 1953 PA 232, MCL 791.233b, that
2 resulted in a conviction and that arose out of the same
3 transaction as the offense for which the sentencing guidelines
4 are being scored shall be considered as an aggravating factor.

5 (e) "Prior criminal record" means all of the following:

6 (i) Misdemeanor and felony convictions.

7 (ii) Probation and parole violations involving criminal
8 activity.

9 (iii) Dispositions entered under section 18 of chapter XIIIA
10 of 1939 PA 288, MCL 712A.18, for acts that would have been crimes
11 if committed by an adult.

12 (iv) Assignment to youthful trainee status under sections 11
13 to 15 of chapter II.

14 (v) A conviction set aside under 1965 PA 213, MCL 780.621 to
15 780.624.

16 (vi) Dispositions described in subparagraph (iii) that have
17 been set aside under section 18e of chapter XIIIA of 1939 PA 288,
18 MCL 712A.18e, or expunged.

19 CHAPTER XI

20 Sec. 1. (1) In all prosecutions for felonies or
21 misdemeanors other than murder, treason, criminal sexual conduct
22 in the first or third degree, armed robbery, ~~and~~ or major
23 controlled substance offenses, ~~not described in subsection (4),~~
24 if the defendant has been found guilty upon verdict or plea and
25 the court determines that the defendant is not likely again to
26 engage in an offensive or criminal course of conduct and that the
27 public good does not require that the defendant suffer the

1 penalty imposed by law, the court may place the defendant on
2 probation under the charge and supervision of a probation
3 officer.

4 (2) In an action in which the court may place the defendant
5 on probation, the court may delay sentencing the defendant for
6 not more than 1 year to give the defendant an opportunity to
7 prove to the court his or her eligibility for probation or other
8 leniency compatible with the ends of justice and the defendant's
9 rehabilitation, **such as participation in a drug treatment court**
10 **under chapter 10A of the revised judicature act of 1961, 1961 PA**
11 **236, MCL 600.1060 to 600.1082.** When sentencing is delayed, the
12 court shall enter an order stating the reason for the delay upon
13 the court's records. The delay in passing sentence does not
14 deprive the court of jurisdiction to sentence the defendant at
15 any time during the period of delay.

16 (3) If a defendant is before the circuit court and the court
17 delays imposing sentence under subsection (2), the court shall
18 include in the delayed sentence order that the department of
19 corrections shall collect a supervision fee of not more than
20 \$135.00 multiplied by the number of months of delay ordered, but
21 not more than 12 months. The fee is payable when the delayed
22 sentence order is entered, but the fee may be paid in monthly
23 installments if the court approves installment payments for that
24 defendant. In determining the amount of the fee, the court shall
25 consider the defendant's projected income and financial
26 resources. The court shall use the following table of projected
27 monthly income in determining the amount of the fee to be

1 ordered:

2	<u>Projected Monthly Income</u>	<u>Amount of Fee</u>
3	\$ 0-249.99	\$ 0.00
4	\$ 250.00-499.99	\$ 10.00
5	\$ 500.00-749.99	\$ 25.00
6	\$ 750.00-999.99	\$ 40.00
7	\$1,000.00 or more	5% of projected monthly
8		income, but not more than
9		\$135.00

10 The court may order a higher amount than indicated by the table,
 11 up to the maximum of \$135.00 multiplied by the number of months
 12 of delay ordered but not more than 12 months, if the court
 13 determines that the defendant has sufficient assets or other
 14 financial resources to warrant the higher amount. If the court
 15 orders a higher amount, the amount and the reasons for ordering
 16 that amount shall be stated in the court order. The fee shall be
 17 collected as provided in section 25a of the corrections code of
 18 1953, 1953 PA 232, MCL 791.225a. A person shall not be subject
 19 to more than 1 supervision fee at the same time. If a
 20 supervision fee is ordered for a person for any month or months
 21 during which that person already is subject to a supervision fee,
 22 the court shall waive the fee having the shorter remaining
 23 duration.

24 (4) This section does not apply to a juvenile placed on
 25 probation and committed under section 1(3) or (4) of chapter IX

1 to an institution or agency described in the youth rehabilitation
2 services act, 1974 PA 150, MCL 803.301 to 803.309.

3 Sec. 3. (1) The sentence of probation shall include all of
4 the following conditions:

5 (a) During the term of his or her probation, the probationer
6 shall not violate any criminal law of this state, the United
7 States, or another state or any ordinance of any municipality in
8 this state or another state.

9 (b) During the term of his or her probation, the probationer
10 shall not leave the state without the consent of the court
11 granting his or her application for probation.

12 (c) The probationer shall report to the probation officer,
13 either in person or in writing, monthly or as often as the
14 probation officer requires. This subdivision does not apply to a
15 juvenile placed on probation and committed under section 1(3) or
16 (4) of chapter IX to an institution or agency described in the
17 youth rehabilitation services act, 1974 PA 150, MCL 803.301 to
18 803.309.

19 (d) If convicted of a felony, the probationer shall pay a
20 probation supervision fee as prescribed in section 3c of this
21 chapter.

22 (e) The probationer shall pay restitution to the victim of
23 the defendant's course of conduct giving rise to the conviction
24 or to the victim's estate as provided in chapter IX. An order
25 for payment of restitution may be modified and shall be enforced
26 as provided in chapter IX.

27 (f) The probationer shall pay an assessment ordered under

1 section 5 of 1989 PA 196, MCL 780.905.

2 (g) The probationer shall pay the minimum state cost
3 prescribed by section 1j of chapter IX.

4 (h) If the probationer is required to be registered under the
5 sex offenders registration act, 1994 PA 295, MCL 28.721 to
6 28.732, the probationer shall comply with that act.

7 (2) As a condition of probation, the court may require the
8 probationer to do 1 or more of the following:

9 (a) Be imprisoned in the county jail for not more than 12
10 months, at the time or intervals, which may be consecutive or
11 nonconsecutive, within the probation as the court determines.
12 However, the period of confinement shall not exceed the maximum
13 period of imprisonment provided for the offense charged if the
14 maximum period is less than 12 months. The court may permit day
15 parole as authorized under 1962 PA 60, MCL 801.251 to 801.258.
16 The court may permit a work or school release from jail. This
17 subdivision does not apply to a juvenile placed on probation and
18 committed under section 1(3) or (4) of chapter IX to an
19 institution or agency described in the youth rehabilitation
20 services act, 1974 PA 150, MCL 803.301 to 803.309.

21 (b) Pay immediately or within the period of his or her
22 probation a fine imposed when placed on probation.

23 (c) Pay costs pursuant to subsection (6).

24 (d) Pay any assessment ordered by the court other than an
25 assessment described in subsection (1)(f).

26 (e) Engage in community service.

27 (f) Agree to pay by wage assignment any restitution,

1 assessment, fine, or cost imposed by the court.

2 (g) Participate in inpatient or outpatient drug treatment **or**
3 **participate in a drug treatment court under chapter 10A of the**
4 **revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to**
5 **600.1082.**

6 (h) Participate in mental health treatment.

7 (i) Participate in mental health or substance abuse
8 counseling.

9 (j) Participate in a community corrections program.

10 (k) Be under house arrest.

11 (l) Be subject to electronic monitoring.

12 (m) Participate in a residential probation program.

13 (n) Satisfactorily complete a program of incarceration in a
14 special alternative incarceration unit as provided in section 3b
15 of this chapter.

16 (o) Be subject to conditions reasonably necessary for the
17 protection of 1 or more named persons.

18 (p) Reimburse the county for expenses incurred by the county
19 in connection with the conviction for which probation was ordered
20 as provided in the prisoner reimbursement to the county act, 1984
21 PA 118, MCL 801.81 to 801.93.

22 ~~(3) Subsection (2) may be applied to a person who is placed~~
23 ~~on probation for life pursuant to sections 1(4) and 2(3) of this~~
24 ~~chapter for the first 5 years of that probation.~~

25 (3) ~~(4)~~ The court may impose other lawful conditions of
26 probation as the circumstances of the case require or warrant or
27 as in its judgment are proper.

1 (4) ~~—(5)—~~ If an order or amended order of probation contains
2 a condition for the protection of 1 or more named persons as
3 provided in subsection (2)(o), the court or a law enforcement
4 agency within the court's jurisdiction shall enter the order or
5 amended order into the law enforcement information network. If
6 the court rescinds the order or amended order or the condition,
7 the court shall remove the order or amended order or the
8 condition from the law enforcement information network or notify
9 that law enforcement agency and the law enforcement agency shall
10 remove the order or amended order or the condition from the law
11 enforcement information network.

12 (5) ~~—(6)—~~ If the court requires the probationer to pay costs
13 under subsection (2), the costs shall be limited to expenses
14 specifically incurred in prosecuting the defendant or providing
15 legal assistance to the defendant and supervision of the
16 probationer.

17 (6) ~~—(7)—~~ If the court imposes costs as part of a sentence of
18 probation, all of the following apply:

19 (a) The court shall not require a probationer to pay costs
20 under subsection (2) unless the probationer is or will be able to
21 pay them during the term of probation. In determining the amount
22 and method of payment of costs under subsection (2), the court
23 shall take into account the probationer's financial resources and
24 the nature of the burden that payment of costs will impose, with
25 due regard to his or her other obligations.

26 (b) A probationer who is required to pay costs under
27 subsection (1)(g) or subsection (2)(c) and who is not in willful

1 default of the payment of the costs may petition the sentencing
2 judge or his or her successor at any time for a remission of the
3 payment of any unpaid portion of those costs. If the court
4 determines that payment of the amount due will impose a manifest
5 hardship on the probationer or his or her immediate family, the
6 court may remit all or part of the amount due in costs or modify
7 the method of payment.

8 (7) ~~—(8)—~~ If a probationer is required to pay costs as part
9 of a sentence of probation, the court may require payment to be
10 made immediately or the court may provide for payment to be made
11 within a specified period of time or in specified installments.

12 (8) ~~—(9)—~~ If a probationer is ordered to pay costs as part of
13 a sentence of probation, compliance with that order shall be a
14 condition of probation. The court may revoke probation if the
15 probationer fails to comply with the order and if the probationer
16 has not made a good faith effort to comply with the order. In
17 determining whether to revoke probation, the court shall consider
18 the probationer's employment status, earning ability, and
19 financial resources, the willfulness of the probationer's failure
20 to pay, and any other special circumstances that may have a
21 bearing on the probationer's ability to pay. The proceedings
22 provided for in this subsection are in addition to those provided
23 in section 4 of this chapter.

24 Enacting section 1. This amendatory act does not take
25 effect unless Senate Bill No. 998 of the 92nd Legislature is
26 enacted into law.